IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/03/2004

CORAM

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM

W.P.No.45664 of 2002
and
W.P.M.P.No.66620 of 2002

The Union of India, rep. by its
Regional Director,ESI Corporation of India,
Regional Office (TN),143, Sterling Road,
Chennai-34. .. Petitioner

-Vs-

1. The Central Administrative Tribunal,
Chennai Bench, rep. by its Registrar,
Addl. City Civil Court Buildings,
Chennai-104.

2. R.Raghavan .. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a writ of certiorari, calling for records from the 1st respondent-Central Administrative Tribunal, Madras Bench in O.A.No.470 of 2002 and quash the order dated 23.10.2002 passed therein.

!For petitioner : Mr.K.C.Ramalingam

^For respondents : R-1 Tribunal
M/s.A.Arul Mozhi

:ORDER

M. KARPAGAVINAYAGAM, J.

R.Raghavan, the second respondent herein who was working as Office Manager in Employees' State Insurance Corporation, was suspended on 30 .4.1985 in contemplation of the disciplinary proceedings for the alleged conspiracy, misappropriation, forgery etc. A criminal case also was lodged against him in C.C.No.10 of 1985. He was facing criminal proceedings along with one Gunasekaran, the co-accused. The second respondent was convicted by the trial Court on 16.12.1987. On the basis of the conviction, he was dismissed from

service by order dated 19 .5.1988. He filed a criminal appeal before this Court in Crl.A.No.50 of 1988. The co-accused Gunasekaran also filed Crl.A.No.46 of 1988 before this Court. Ultimately, this Court, by common judgment dated 9.6.1998, acquitted the second respondent and confirmed the conviction as against the co-accused. In view of the acquittal, the Department set aside the dismissal order on 19.2.2001 and initiated disciplinary proceedings. Challenging the same, he filed O.A.No.470 of 2002 before the Tribunal and by order dated 23.10.2002, the Tribunal quashed the said order dated 19.2.2001 and directed the Department to reinstate the applicant with effect from 30.4.1985, i.e. the date of suspension and give all attendant service benefits and terminal benefits. This order of the Tribunal is under challenge before this Court in this writ petition filed by the Department.

2. According to learned counsel for the petitioner, departmental proceedings have been initiated only on the basis of the observations made by this Court while acquitting the second respondent to the effect that departmental enquiry would be the proper course for the serious negligence which could be attributed to the second respondent, and as such, the order of the Tribunal quashing the order of the Department dated 19.2.2001, reviving the disciplinary proceedings, is illegal.

3. We have heard learned counsel for the petitioner as well as learned counsel for the second respondent and also gone through the records and the impugned order.

4. It is not in dispute that the charges in the disciplinary proceedings and the charge-sheet filed before the Court are the same. The crux of the accusation is that during 1983, the second respondent colluded with two other accused who were formerly working as Record Sorter-cum-Peon and L.D.C. respectively, in the local office and in pursuance of the same, he authenticated the forged admission and discharge certificate purporting to be in the names of several persons and shared the pecuniary advantage to the tune of Rs.2,805/- along with other accused, and thereby, contravened Rule 3(1)(i) and (ii) of the C.C.S. Rules, 1964 read with Regulation 23 of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959. The documents and witnesses are the same before the disciplinary authority and before the Court.

5. The criminal case as against the second respondent ended in acquittal. As a matter of fact, this Court, while setting aside the conviction and sentence imposed by the trial Court in Crl.A.50 of 1988, would observe that there is no iota of evidence as against the second respondent with reference to the conspiracy, collusion and sharing of any pecuniary advantage. Admittedly, this judgment of acquittal has not been challenged before the Supreme Court. If at all the Department is aggrieved, it could very well make arrangements for filing an appeal through the prosecuting agency. Without doing that, the Department has initiated disciplinary proceedings.

6. The only reason given by the Department for initiating disciplinary proceedings is that liberty had been given by this Court to initiate departmental proceedings for the serious negligence shown by the second respondent while authenticating the Docket entry.

7. On going through the common judgment of this Court in Crl.A.Nos.4 6 and 50 of 1988, it is clear that this Court only made a passing reference

stating that the Department should not have resorted to prosecute as against Raghavan, the second respondent herein and at the most, he could have been proceeded with the departmental enquiry for the irregularity and negligence. This observation cannot be taken that liberty has been given for initiating departmental proceedings.

8. On going through the order of the Tribunal, it is clear that the Tribunal would specifically state that there is no such liberty given by this Court to the Department while passing final judgment in the criminal appeal. But earlier, liberty was given by the Court pending appeal, but the same was not availed of. Relevant portion of the observations made by the Tribunal in paragraph 11 of the order is as follows:

"11. An argument was taken by the learned counsel for the respondent that they have reserved the right to restore the departmental enquiry and the order of the High Court also states that liberty is given to the respondent to proceed departmentally. It is true that a right is reserved to proceed departmentally but that right was given at that time when the criminal appeal was pending before the High Court. The High Court while disposing of the appeal did not give liberty nor it was argued by the learned counsel for the respondent. The High Court only states that a sort of serious negligence could be attributed for the manner in which the applicant had conducted himself in authenticating the dockets for the rest of the story of the prosecution is to be believed. Hence, the answer for such irregularity would be the departmental enquiry according to the disciplinary proceedings governing his conditions of service. According to us, there is no liberty given to the respondent."

9. Of course, it is true that even though such a liberty has not been given to the Department, we can very well direct the Department to initiate fresh proceedings as against the second respondent with regard to 'negligence' alone. But we are not inclined to give such a direction for the following reasons:

(a) The petitioner is now aged about 71 years. He joined the Corporation on 14.7.1958 as Lower Division Clerk. He was promoted as Office Manager on 8.2.1979. He was suspended for the above charges on 30.4.1985. He was convicted in the criminal case in S.C.No.10 of 1985 on 16.12.1987. He attained superannuation on 31.5.1991.

(b) In the meantime, he filed an appeal before this Court in Crl.A. No.50 of 1988. Ultimately, on 9.6.1998, he was acquitted. Even though he was acquitted, the Department did not come forward either to reinstate him or to pay service and retirement benefits. He made repeated representations to the Department, but there was no response.

(c) Therefore, in the year 2000, he filed a writ petition in W.P.No.16662 of 2000 for giving a direction to the Department. to reinstate him. Only after receipt of notice, the Department set aside the order of dismissal and directed departmental enquiry for the said charges on 19.2.2001. Therefore, against these orders, he filed W.P.No.5584 of 2001 and the same was subsequently dismissed for want of jurisdiction.

(d) Then in 2002, he filed O.A.No.470 of 2002 to quash the impugned order by the Department. Ultimately, the O.A. was allowed and the relief was granted by the Tribunal on 23.10.2002. Even then, the Department did not comply with the order of the Tribunal. Therefore, he had filed contempt

petition. At that stage, the Department has filed the present writ petition before this Court.

10. Thus, it is clear that the second respondent had been driven from pillar to post and facing all sorts of proceedings both in criminal Court and in the other forums from the year 1985. The records would show that even after getting the judgment of acquittal from this Court, the Department did not take immediate steps to reinstate him or initiate appropriate proceedings. The proceedings were initiated only in 2001 even though the criminal case ended in acquittal in June 1998 . Admittedly, he was allowed to retire on superannuation on 31.5.1991 . Nearly 20 years have elapsed. On going through the records, it is clear that the second respondent has suffered a lot for a long time and even after getting orders from both this Court in the criminal appeal and before the Tribunal, he was not able to enjoy the fruits at all.

11. Under those circumstances, there is no necessity for giving direction to the Department to reopen the matter or to initiate fresh proceedings in regard to negligence. It is to be noted that the Department also was equally negligent in not taking appropriate steps either by initiating fresh proceedings or by giving the benefit of reinstatement within a reasonable time.

12. Hence, the writ petition is dismissed, with costs of Rs.1,500/-. W.P.M.P.No.66620 of 2002 is closed.

Index: Yes
Internet: Yes

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To

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